IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 235 of 1991

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THE NATIONAL INSURANCE CO.LTD

Versus

SAIFUDDIN MULLA YUSUFALI DAHODWALA

MR HARIT J BHATT for Petitioner No. 1
MR MTM HAKIM for Respondent No. 1-6
MR HM PARIKH for Respondent No. 7

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: 13/08/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

1. By this Appeal, the appellant, original opponent no.3 in Motor Accident Petition No.1385 of 1986, has assailed the judgment and award of the Tribunal dated 29-03-1990, mainly on the premise that the liability of the appellant as insurer is restricted to the extent provided under the provisions of the Motor Vehicles Act, 1939 (for short `the Act') as the coverage of the insurance in respect of the offending vehicle at the relevant time has been by virtue of the Act Policy and no wider liability had been accepted by the insurer.

2. In order to examine and evaluate the sole proposition involved in this Appeal, we have heard the learned advocates appearing for the parties at a greater length. We have also dispassionately considered the evidence on record as well as the text and texture, the content and colour of the impugned judgment and award of the Tribunal, and the relevant proposition of law under the Motor Vehicles Act, 1939 applicable at the relevant time.

3. Firstly, it is difficult to resist the temptation of mentioning that the sole ground of challenge, as advanced before us in this Appeal, is conspicuously nonexistent at the time of proceedings before the Tribunal. It is an evident fact that such a plea was not raised by the insurer, the appellant before us, in the written statement, nor it was propounded at the time of leading the evidence to show that the liability of the insurer is limited. Obviously, therefore, there cannot be an issue in absence of pleadings of the party. We are conscious of the proposition that the proceeding before the Tribunal under the Motor Vehicles Act are in the nature of summary proceedings. However, the issues have been framed on the basis of the pleas and disputes raised by the parties, upon which the issues are formulated and cast. There is no such issue. It will also be very interesting to highlight and herald that had the dispute which is now raised for the limited liability been the real plea, in so far as the insurer is concerned, ordinarily, there would not be a common lawyer for the defence of the driver, insured and the insurer for the simple reason that there will be conflict of interests. This may lead to a proposition that there was no such dispute at all before the Tribunal, but we do not propose to divulge on that aspect at this stage.

4. Since no such dispute is raised, no issue is framed, it cannot be said that the view and the ultimate conclusion of the Tribunal fastening the full liability on the part of the insurer is in any way unjust, unreasonable or unjustifiable. This is precisely the issue before us. Be it also stated that there is no request even for invocation of the provisions of Order 41, Rule 27 of the Code of Civil Procedure, 1908. We, therefore, find that the main proposition of dispute, which is advanced before us, remained conspicuously silent before the Tribunal in the light of the fact that the interest of all the three parties came to be represented by a common lawyer, and there is also no move for invocation of the analogous provisions of Order 41, Rule 27 of the C.P.C. We, therefore, find that the Appeal on hand at the instance of the insurer is meritless and deserves to be dismissed.

Hence, the Appeal stands dismissed. There shall no order as to costs. Obviously, on dismissal of the main matter, the interlocutory order passed in the course of proceedings of the Appeal shall not assume any survival value.

(J.N. BHATT, ACTING C.J.)

(A.L. DAVE, J.)

[SNDEVU]
P.S.